रजिस्टर्ड नं० एल०-33/एस० एम०/13-14/96.

राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, मंगलवार, 18 जून, 1996/28 ज्येष्ठ, 1918

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-171002, 5 जून, 1996

संख्या 3-14/94-ई० एल० एन०.—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/हि० प्र०-वि० स०/1,4-5/94, दिनांक 22 मई, 1996 तद्नुसार 1 ज्येष्ठ, 1918 (शक) और अधिसूचना संख्या 82/हि० प्र०-वि० सं०/3/94, दिनांक 22 मई, 1996, जिनमें क्रमशः उच्चतम न्यायालय, भारत के निर्वाचन सिविल अपील संख्या 6303-6305 और 7232 में 9 अप्रैल, 1996 और सिविल अपील संख्या 5676 में 26 मार्च, 1996 के निर्णय निहित है, को जनसाधारण की सूचना हेतु प्रकाशित किया जाता है ।

आदेश से,

डा० सुतानू ब्रिहुरिया,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश ।

1730-राजपत्र/96-18-6-96—1,324. मूल्य : 1 रुपया ।

भारत निर्वाचन आयोग

नई दिल्ली,
22 मई, 1996
दिनांक,
1 ज्येष्ठ, 1918 (शक)

अधिसूचना

संख्या 82/हि० प्र०-वि० स०/1,4-5/94.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116 सी के अनुसरण में, निर्वाचन आयोग 1994 की निर्वाचन सिविल अपील सं० 6303-6305 और 7232 में उच्चतम न्यायालय के तारीख 9 अप्रैल, 1996 के निर्णय को एतद्द्वारा प्रकाशित करता है ।

आदेश से,

घनश्याम खोहर,
सचिव,
भारत निर्वाचन अयोग ।

ELECTION COMMISSION OF INDIA

New Delhi,
the 22nd May, 1996
Dated,
1 *Jyaistha,* 1918 (*Saka*)

NOTIFICATION

No. 82/HP-LA/1,4-5/94.—In pursuance of Section 116C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes judgement dated 9th April, 1996 of the Supreme Court of India in Civil Appeal Nos. 6303-6305 and 7232 of 1994.

By order,
GHANSHYAM KHOHAR,
Secretary,
Election Commission of India.

IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL APPELLATE JURISDICTION

Criminal Appeal No. 185 of 1988

Rakesh Singha .. *Appellant*

Versus

State of Himachal Pradesh .. *Respondent*

WITH

Criminal Appeal No. 186 of 1988

State of Himachal Pradesh .. *Appellant*

Versus

Rakesh Malik & Others .. *Respondents*

WITH

Criminal Appeal No. 187 of 1988

Rakesh Malik .. *Appellant*

Versus

State of Himachal Pradesh .. *Respondent*

WITH

Civil Appeal Nos. 6303-6305 of 1994

Shri Rakesh Singha .. *Appellant*

Versus

Shri Vikram Anand & Ors. .. *Respondents*

WITH

Civil Appeal No. 7232 of 1994

Shri Harbhajan Singh Bhajji .. *Appellant*

Versus

Shri Rakesh Singha & Ors. .. *Respondents*

Judgment

K. VENKATASWAMI, J.

Criminal Appeal Nos. 185 to 187 of 1988

The above three Criminal Appeals arise out of a judgment and order in Criminal Appeal No. 42 of 1979 on the file of the High Court of Himachal Pradesh dated 25-9-1979.

The appellants in Criminal Appeal Nos. 185 and 187 of 1988 were convicted by the learned trial Judge under Sections 148, 452, 427 and 325 read with Section 149 I.P.C. However, the learned

Sessions Judge dealt with the convicted accused under Section 360 of the Criminal Procedure Code and instead of sentencing them to any punishment directed them to be released on their entering into a bond in the sum of rupees ten thousand with one surety for the like sum in each case undertaking to appear and receive sentence when called upon during a period of 2 years from the date of judgment and in the meantime to keep peace and be of good behaviour. The State aggrieved by the judgment of the learned Sessions Judge preferred appeal to the High Court. On appeal, the High Court enhanced the sentence of the accused/appellants to rigorous imprisonment for a period of five years under Section 304 Part (II) read with Section 149 I. P. C. It also awarded sentence of R. I. for a period of three years for offences under Sections 325, 452 read with Section 149 I. P. C. Still further they were sentenced to undergo R. I. for two years under Section 148, I.P.C. All the above sentences were directed to run concurrently. The State aggrieved has still filed Criminal Appeal No. 186 of 1988 seeking further enhancement of sentence as well as for conviction of some other accused persons.

Briefly stated, the facts are as under :

On May 10, 1978 one Harnam Dass (P. W. 7) celebrated his daughter's marriage at his house (Alfin Lodge) in Shimla. A jeep bearing registration No. HPN-102 belonging to Harnam Dass was parked on the road just ahead of his house. P. W. 3 Shakti Ram was the driver who found two boys (university students) pushing the jeep and third one sitting on the steering trying to start the vehicle. When the driver questioned the boys, they started abusing him and threatened to assault. The driver went down towards Alfin Lodge and returned with Rakesh (P. W. 4) who is the son of Harnam Dass. On questioning the boys for interfering with the jeep, he was also abused and when Rakesh shouted for help, the boys left the jeep and went away. While goingt hey shouted that they would soon teach them a lesson. Rakesh informed about this incident to P. W. 2 Dharam Pal who was then working as Additional District & Sessions Judge, Kanra who brought the matter to the notice of P. W. 7 Harnam Dass and also rang up the Polgce Station for Police protection. The Station House Officer by name Pritam Singh (P.W. 35) with police party reached Alfin Lodge in a Police Van and police party was also there till about 1.30 A. M. on 11-5-1978 when the marriage party and the bridge departed. Thereafter the police party left the place leaving one Head Constable and one Constable at Alfin Lodge on the suggestion of Dharam Pal. About 8 or 9 persons from Bridge's side had yet to take their meals which was ordered to be served. At that time Dharam Pal aw about 20-25 boys rushing towards the main gate of Alfin Lodge. The distance between the main gate of the Alfin Lodge and the place where Dharam Pal and others were sitting and waiting for meals to be served was about 50 ft. Dharam Pal on seeing the boys proceeded towards them with the intention to persuade and stop them from entering the Shamiana. He even disclosed his identity thinking that they might show some respent. The boys were armed with various types of weapons like, hockey sticks, iron rods, iron chains, dandas, empty bottles etc. Naresh Kumar, P.W. 9 who is the bridge's brother followed Dharam Pal and some other men folk also came there. The appellant in Criminal Appeal No. 187 of 1988 questioned the men folk present then as to who had removed his boys from the jeep. While they were talking, the appellant in Criminal Appeal No. 187 of 1988 gave a hockey blow aiming at the head of Naresh Kumar which the latter received on his left forearm resulting in a fracture of his ulna bone. Then it is stated the said appellant instigated the other boys to attack and kill one and all persons there and this resulted in indiscriminate beating which lasted for about 10 minutes. Seeing the situation going out of control, Dharam Pal once again rang up the police station and apprised the police of the happening there and requested for immediate police assistance. On coming to know of this, the boys retreated. While going back they threw stones on the building thereby breaking some window panes. They also broke the flood light which had been installed on the Katcha approach road. In the incident, Dharam Pal, Naresh, Vidyasagar, Rakesh, Remesh, Omesh and the deceased Suresh had all received

various injuries at the hands of the boys. About 20 minutes later, the S. H. O. Pritam Singh accompanied by a police force reached the place and immediately sent the injured persons except Dharam Pal and Omesh to Ripon Hospital, Shimla in the police van for their medical examination and treatment. He immediately inspected the spot and started recording statements of P. W. 2 Dharam Pal under Section 154 Cr. P. C. After recording the statements, the same were sent to the Police Station for registration of the case. Initially the case was registered under Sections 147, 148, 149, 452, 427 and 323 I. P. C. Later on as one of the injured namely, Suresh, succummbed to the injuries, charges under Sections 325, 307 and 302 I. P. C. were also added. The S. H. O. during investigation took into possession a hockey stick, two broken pieces of cricket wicket, a wrist watch which had fallen from the wrist of Dharam Pal, a broken piece of a bottle, a piece of wood, some stones and some broken window panes from the spot. He also took into possession the shirt of Ramesh which was be smeared with blood.

Pursuant to this, Police could round up only 14 of the boys who were involved in the incident. Some of them were arrested on 12-5-1978 and others were arrested on 15th May, 22nd May and 29th May, 1978. While in the Police custody, Hukam Chand, Chuni Lal and Chain Ram made statements under Section 27 of the Evidence Act in pursuence of which the Police recovered an iron chain, broken leg of a chair and an iron rod said to have been used in the course of the incident. On being sent for chemical analysis they were found stained with human blood. Stomach contents of deceased Suresh along with portions of liver, one kidney and spleen as well as samples of blood and urine were also sent for chemical analysis and as per the information of the chemical examination, blood alcohol concentration to the extent of 86 mg. per 100 ml. was detected and presence of alcohol was confirmed by the stomach contents recovered, kidney, spleen and urine of the deceased. The 14 boys except Kahan Singh Dogra who were arrested were challaned to the Court of the Chief Judicial Magistrate, Shimla who committed all of them to face trial in the Sessions Court for offences under Section 147, 148, 149, 452, 427,323,325,353,307, 302 and 201 I. P. C.

The accused Kahan Singh Dogra was discharged under section 227 Cr. P. C.

All the accused were sent to the Sessions Court to face the trial as they pleaded not guilty. The common plea of the accused persons was that they were not present at the time of alleged occurrence and they have been falsely implicated in this case. The learned Sessions judge after going through the oral evidence of PWs and the documentary evidence produced by the prosecution and also the statements of the accused under section 313 Cr. P. C. found that seven out of thirteen who faced the trial, namely, Mehar Singh, Hardev Singh, Arun Mahajan, Pratap Singh, Jagrup Singh Chaudhry, Rajender Chauhan and Prem Nath had not committed any of the affences charged against them and consequently acquitted all these seven persons under section 232 Cr. P. C. The balance six of the accused were called upon to enter their defence. Though the witnesses listed by the accused were summoned, the accused persons did not avail the opportunity of examining them.

After hearing the arguments of the counsel for the prosecution and the defence the learned Sessions Judge by Order dated 4-10-78 convicted the appellant in Crl. Appeal No. 185 & 187 of 1988 (appellants in Crl. A. No. 185 & 197/88) only offences punishable under sections 148, 452, 427 and 325 read with 149 I. P. C. However as mentioned above, they were released on their entering bounds for a sum of Rs. 10,000/-with one surety for the like sum and also undertakings during a period of two years from the date of the judgment and keep peace in the meantime and of good behaviour.

On appeal by the State of Himachal Pradesh, the High Court for reasons stated in the Judgment under appeal while confirming the convictions of the appellants in Crl. A. No. 185 & 187 of 1988 sentenced them by imposing various terms of imprisonment to be run concurrently as indicated earlier.

Learned counsel appearing for the appellant in Crl. A. No. 185/88 contended that the conviction if at all could be justified on the ground of vicarious liability and as such could have been punished with fine alone and not by sentencing to imprisonment. Though PW 9 is said to have identified the accused, namely, the appellant, in the absence of acceptable corroboration, the evidence of PW 9 ought not to have been accepted by theCourt. The evidence of PW 9 is not fool proof for acceptance without corroboration especially when he gave only the surname. The trial court acquitted four other co-accused as it was not prepared to accept the evidence of PW9 with regard to those four accused persons' identification. Likewise, applying the same reasoning, the contention is, that the courts should have rejected the evidence of PW 9 in respect of the appellant's identification as well. In any case, according to the learned counsel, that there was no intention to cause grievous injury much less one of death is obvious from the fact of the weapon used in the attack. The High Court was not justified, according to the learned counsel, in converting the offence from the one under Section 352 to another under Section 304 Part II on the facts of this case and, therefore, the enhancement of sentence and that too after eight years of the occurance and the appellant having served the punishment imposed by the trial court is not justified. On these grounds, the learned counsel argued that the appeal should be allowed.

The learned counsel for the appellant in Crl. A. No. 187/88 contended that the appellant's name did not find a place in the First information Report and the evidence, read as a whole, does not establish the case to be against the appellant and that the identity was not established beyond doubt. He particularly invited our attention to the fact that PW 2, Dharam Pal did not testify, the crucial fact that the deceased received any injury at all. According to him, this vital factor escaped attention of the trial court as well as the High Court. He built up his argument further by contending that having regard to the postmortem report, the deceased could have died on account of fall as a result of excessive drinking and that is why PW-2 did not testify to the alleged injury received by the deceased at the hands of the accused. It was also argued that the accused has since well settled in life and if he is asked how to under go the remaining part of imprisonment, that will spoil his career particularly when during all these years the appellant has not given any room for a complaint.

So far as the appeal filed by the State is concerned, namely Crl. A. No. 186/88, no one was present to argue the appeal. However, we have considered the grounds raised in the Special leave petition and it will be dealt with at the appropriate place.

We have considered the submissions of the learned counsel appearing for the appellant in Criminal Appeal Nos. 185/88 and 187/88. After carefully going through the judgments of the Sessions Court and the High Court, we are unable to pursuade ourselves to accept the contentions raised by the learned counsel for the appellants in Criminal Appeal Nos. 185/88 and 187/88. Not only for the reason that the findings are concurrent but also for the reason that the findings of the courts are well-considered, well supported and well-founded we find that there is no scope for interference either with the conviction or with the enhancement of sentence awarded by the High Court.

We have seen the root cause for the incident was the meddling with jeep by the college students Though the prosecution presented the case as if nothing more than an altercation took place in. onnection with the jeep incident, the learned Sessions Judge on the basis of evidence of PW 10

was right in finding that the accused Kedar Singh and Rakesh Singha appellant in Crl. A No. 185/88 were beaten and humiliated by certain persons belonging to Alfin Lodge. He was also right in observing that as a result of such manhandling of the above said accused. the students later assembled and decided to take revenge. Otherwise there was no good reason for P.W.2 Dharampal to seek police protection during the marriage ceremony that was to take place in the night of 10th May, 1978. Proceeding further, we find that after the main incident at the Alfin Lodge and on the basis of F. I. R. given by P. W. D. 2 Dharampal. 14 boys were arrested out of which one Kahan Singh Dogra was discharged under section 227 of Cr. P.C. Later 7 were acquitted under section 232 Cr. P. C. and only six were called upon to enter on their defence by the learned Sessions Judge. Even among the six, after the trial, the learned Sessions Judge convicted only the two accused appellants before us and acquitted the rest.

As stated above, on appeal both by the accused/appellants and the State, the High Court while confirming the conviction of appellants before us and acquittal of four others, enhanced the sentence impose, on the accused appellants. This only shows that the courts have carefully weighed the evidence and have not accepted the same in its entirity as presented by the prosecution.

So far as the accused appellants are concerned, the main arguments, as we have seen earlier, are regarding their identity, involvement in the main incident that took place at Alfin Lodge credibility of evidence tendered by PW 9. Other contention seriously pressed was that the appellant in Criminal Appeal No. 187 of 1988 contended that the name of the appellant did not appear in the F. I. R. and the inclusion at the subsequent stage was an after-thought. Another argument advanced was that both the accused appelants have well-settled in life and at this distance of time, this Court will take note of that fact and if this court confirms the sentence imposed on the accused appellants that will spoil their career. So far as the main incident that took place the Alfin Lodge is concerned, that has been well-established beyond doubt by the prosecution witnesses 2, 4, 5, 7, 8, 9 and 20 and therefore, that was not seriously challenged.

Coming now to the identity of the appellants, the High Court rightly accepted the evidence of PW 9 and found as follows :

> "The learned Sessions Judge has given formidable reasons in support of his findings that there can be hardly any doubt about the involvement of Rakesh Malik and Rekesh Singha. We do not think there is any good reason to take a different view of this point. PW 9 Naresh Kumar, Advocate, had met both of these accused earlier. It was he who had kept one of his hand on Rakesh Malik's shoulder at the place of the main occurrence and had addressed him; "Malik, kia bat hai ?" Accused Rakesh Malik, however, directed a hockey stick on Naresh Kumar's head which the latter warded off by his left fore-arm resulting in fracture of unla-bone, which fact is borne out by the medical evidence. That PW 9 Naresh Kumar had so addressed accused Rakesh Malik before the members of the unlawful assembly started inflicting injuries to whosoever came in their way is borne out from the testimony of other eyewitnesses as well. PW 4 Rakesh Sood, PW 5 Ramesh Sood and PW 20 Vidya Sagar, Advocate, have identified Rakesh Malik in the Court. Even if much weight is not attached to such identification, there is no reason at all to disbelieve the testimony of PW 9 Naresh Kumar who has come out totally unscath in his cross-examination as far as the identification of Rakesh Malik and Rakesh Singha is concerned. PW 11 Chet Singh has deposed that he alongwith other University students after hearing that

some of the students had been beaten and were lying by the side of the road, had proceeded to the place where jeep had been parked. He saw accused Kedar Singh and Rakesh Singha lying on the roadside at a distance of about 10 paces from the dhaba being run by PW 10 Raj Kumar. P W Raj Kumar had then told them that Rakesh Singha and Kedar Singh ad a quarell with some members of the marriage party. This part of his testimony has not been challenged in the cross-examination which establishes the involvement of these two persons in the jeep incident. PW 10 Raj Kumar was declared hostile and his demeanour in the witness box was noted by the learned Session Judge with observations that he was trying to act in an overclever manner and was forestalling the questions put to him and was volunteering replies even before the questions were complete. Even this witness identified accused Kedar Singh being involved in the jeep incident though he denied having made a statement before the police that Kedar Singh had told him about Rakesh Singha having misbehaved with the driver under the influence of liqour. Thus, it stands proved beyond reasonable doubt that accused Rakesh Malik and, Kedar Singh were two persons out of the three who had tried to drive away the jeep. As regards the identification of the culprits at the time of main occurrence which took place at about 1 A. M. it is writ large on the statements of eye-witnesses in this case that none of them had a desire to implicate anyone falsely. Cumulatively, therefore, we are in entire agreement with the learned Sessions Judge about the identity of accused Rakesh Malik and Rakesh Singha having been fully established."

After going through the evidence, we do not find any good ground to take a different view. Regarding the arugment that the name of the appellant in Criminal Appeal No. 187/88 did not find a place is F. I. R. given by PW 2 Dharampal, we do not find that there is any lacunae in that. PW 20 in his deposition has stated as follows :

"There was no visible injury mark on the person of Suresh when he accompanied us to the Hospital. After our medical examination in the Hospital, Suresh first complained that two of fingers of his hand had become numb and then he complained that he was feeling as if his right side was being paralysed. The doctor then started examining Suresh and also inquired from him if he had recieved any injury. Suresh could not reply by mouth but he pointed out towards his head by his hands. The doctor wanted Suresh to sign some papers but Suresh was unable to sign his name. It was at about 5.45 or 6 A. M. when Suresh complained of his troubles. Soon-after he became unconscious. He was therefore, detained in the Hospital and the rest of us returned to Alfin Lodge in the same Van. About fifteen minutes later we recieved a telephonic massage that the condition of Suresh has grown very serious and he was being removed to Snowdon Hospital. On receipt of that information some of us went to Snowdon Hospital. Suresh could not recover and expire in the early hours of 12th May."

As a matter of fact, it appears from the evidence that the deceased Suresh was in fact helping the other injured persons that the Alfin Lodge in taking them to hospital and that was the reason for PW. 2 not mentioning Suresh as one of the injured in the FIR. Therefore it was quite in accord with the evidence of P.W. 20. Another argument advanced by the learned counsel for the appellant in Criminal Appeal No 187/88 was that having regard to the post-mortem report of the deceased Suresh, it was suggested that the injuries could have been caused on account of the fall due to effect of alcohol. This argument is stated to be rejected only as the evidence shows that the deceased was helping other injured persons to be taken to hospital and only at the hospital he suddenly developed numbness and became unconscious. The last argument concerning the accused/appellants that during the pendency of the appeal they having well settled in life

should not be asked to go to prison by confirming the sentence is not acceptable to us on the facts of this case. We have seen that the accused appellants along with number of others armed with hockey sticks, iron chains etc. attacked the aged defenceless persons indiscriminately including women and children completely turning the happy marriage occasion to one of mourning. On the facts, we are satisfied that the High Court was justified in enhancing the sentence and there is no case for interference on any account.

Now coming to the appeal preferred by the State (Criminal Appeal No. 186/88) we do not find any merit in the appeal. The High Court was right in altering the conviction from one under S. 302 to S. 304 Part II having regard to the fact that the death occurred after 24 hours of inflicting injury and also the type of weapon used for causing the injury. We do not think that there is any case for further enhancing the sentence. For the foregoing reasons, we dismiss all the three appeals.

Civil Appeal Nos. 6303-05 of 1994 and 7232 of 1994.

All these appeals arise out of a common judgment and order of the High Court of Himachal Pradesh in Election Petition Nos. 1/94, 4/94 and 5/94, dated 13-9-94. The appellant in C. A. No. 6303-05/94 was elected to the 8th Assembly Constituency, Himachal Pradesh in the election held on 9-11-93. It may be mentioned that the appellant who is the appellant in Criminal Appeal No. 185/88 filed his nomination paper during the pendency of the said appeal in this Court after obtaining suspension of the sentence imposed on him by the High Court. His nomination was objected to by the election petitioners. On the basis of the order of suspension of sentence by this Court his nomination was accepted and he was declared elected on 29-11-93. Challenging his election three election petitions were filed in the Himachal Pradesh High Court. The High Court took the view that suspension of sentence will not automatically result in suspension of conviction. therefore, the acceptance of the nomination was illegal. The High Court said as follows ;

> "The result of the above discussion is that the election of Shri Rakesh Singha is void as the result of his election has been materially affected by the improper acceptance of his nomination. He is disqualified to be chosen to fill the seat of 8-Shimla Assembly Constituency having been convicted and sentenced to imprisonment for a period of more than two years by judgment dated 25-9-87 in Crl. Appeal No. 42 of 1979 passed by this Court. The order dated 10-1-89 and 2-2-90 passed by the Supreme Court releasing Shri Rakesh Singha on bail, resulting in the suspension of sentence imposed upon him, do not arrest the disqualification which was in operation on the date of scrutiny of this nomination under Section 36 of the Act and also continues to be in operation when these election peti -tions are being decided."

Challenging the above decision of the High Court, the appellant has filed Civil Appeal No. 6303-05/94. Civil Appeal No. 7232/94 is preferred by the appellant who was candidate defeated in the election and being aggrieved in not getting a declaration as elected in the place of the first respondent in his Appeal (Rakesh Singha) even though he was found to have secured next highest votes.

While these appeals were heard along with Criminal Appeal Nos. 185, 186 and 187 of 1988, the counsel on both sides agreed that in the event of this Court dismissing the Criminal Appeals, all the election appeals will also stand dismissed and no separate argument was adressed.

As we have dismissed the criminal appeals, these civil appeals also stand dismissed. However, there will be no order as to costs.

Sd/-
J. S. VERMA (J)

Sd/-
S. P. BHARUCHA (J)

New Delhi :

April 9, 1996.

Sd/-
K. VENKATASWAMI (J)

भारत निर्वाचन आयोग

नई दिल्ली,
दिनांक, 22 मई, 1996

अधिसूचना

सं0 82/हि0 प्र0 वि0 स0/3/94.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116-सी के अनुसरण में, निर्वाचन आयोग 1994 की सिविल अपील संख्या 5676 में भारत के उच्चतम न्यायालय के तारीख 26 मार्च, 1996 के आदेश को एतद्द्वारा प्रकाशित करता है ।

आदेश से,
घनश्याम खोहर,
सचिव,
भारत निर्वाचन आयोग ।

ELECTION COMMISSION OF INDIA

New Delhi,
Dated, the 22nd May, 1996

NOTIFICATION

No. 82/H.P.-LA/3/94.—In pursuance of Section 116C of the Representation of the People Act, 1951(43 of 1951) the Election Commission hereby publishes Order dated, 26th March, 1996 of the Supreme Court of India at Delhi in Civil Appeal No. 5676 of 1994.

By order,
GHANSHYAM KHOHAR,
Secretary,
Election Commission of India.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5676 OF 1994

Ram Partap Chandel .. *Appellant.*

versus

Chaudhary Lajja Ram & Ors. . *Respondents.*

ORDER

This is an appeal by an unsuccessful candidate who then filed an election petition before the High Court of Himachal Pradesh. The election was to the 11-Doon Assembly Constituency of the State of Himachal Pradesh. The first respondent was the successful candidate. His election was challenged by the appellant on the ground of corrupt practices covered by Section 123(4) and (B) of the Representation of the People Act, 1951 (hereinafter called 'the Act'), Sub-section (4) of Section 123 refers to the publication by a condidate or his agent or by any other person with the consent of the candidate or his election agent of a false statement concerning a candidate which is known to be false. Sub-section (B) of Section 123 refers to booth capturing.

In the election petition the appellant averred that the aforesaid corrupt practices had been committed by the first respondent and Harbhajan Singh, his son, who was his election agent, also, by one Amarnath Kaushal, who was the counting agent of the first respondent. Both Harbhajan Singh and Amarnath Kaushal had been candidates at the election but had withdrawn their candidature. They were not implieded as respondents to the election petition. The High Court, basing itself upon the provision of Section 82 of the Act, came to the conclusion that the election petition was not mantainable and dismissed it.

Section 82 reads thus :

"82. *Parties of the petition.* —A petitioner shall join as respondents to his petition:—

(*a*) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is viod, claims a further declaration that he himself of any other candidate has been duly elected all the contesting candidates other than the petitioner, and where no such further declaraton is claimed, all the returned candidates; and

(*b*) any other candidate against whom allegations of any corrupt practice are made in the petition.

The High Court took the view that Harbhajan Singh and Kaushal fell within the purview of sub-section (*b*) of Section 82 for they had been candidates at the said election before they withdrew their candidature and allegations of corrupt practice had been made against them in the election petition.

Learned counsel for the appellant submitted that the allegations of corrupt practice in the election petition against Harbhajan Singh and Kaushal had not been made in their capacity of

candidates at the election, but in their capacity of election and counting agents respectively of the first respondent and that, therefore, the provisions of Section 82 (*b*) were not attracted. He submitted that the capacity in which the allegations were made against Harbhajan Singh and Kaushal was very relevant and ought to have been taken into consideration by High Court. Emphasis was laid upon the fact that a remedy against Harbhajan Singh and Kaushal for their alleged commission of corrupt practices was available by the invocation of the provisions of Section 99 where by the High Court could have given them notice and heard them before passing appropriate orders on the election petition. It was emphasized that it was the function of the advocate who had drafted the election petition to arraign the proper respondents therein and that neither the appellant nor the constituency should suffer for his default; it was in the interests of both that the serious charges of corrupt practice should be investigated.

Learned counsel for the first respondent submitted that the provisions of Section 82 (*b*) were perfectly clear and the High Court was obliged to dismiss an election petition which did not comply with its provisions.

It will be seen that sub-section (*a*) of Section 82 uses the words "contesting candidates" and sub-section (*b*) uses the words "any other candidate". The combined effect of sub-sections (*a*) and (*b*) is, plainly, to require the impleadment in an election petition of all candidates at an election againt whom allegations of corrupt practice are made. This would apply not only to those who actually contested the election, but also to those who stood for election but withdraw their candidature before the polling date. The person being the same, it is of no consequence that the allegation of corrupt practice is made in relation to a point of time when the candidature had been withdrawn and the person was new acting as the agent of a contesting candidate.

This view is supported by the decision of this Court in *Mohan Raj* vs. *Surendra Kumar Taparia and Ors.* 1969 (1) S. C. R. 630. In this case seven candidates had been nominated for election to a Parliamentary constituency, but two withdrew. The first respondent, one of the remaining five candidates, was declared elected, and his election was challenged by the appellant who was an elector. Only the returned candidate and the other four contesting candidates were made parties. On the objection of the first respondent that the allegations in the petition were vague, the petition was amended and, in the amended petition, with reference to one of the grounds, namely, the offering of bribes to voters, the appellant gave instances of bribes having been offered or paid by the first respondent, his election agents, and others. Two persons were referred to as the election agents of the first respondent. One of them was one of the candidates who had withdrawn his candidature and had not been impleaded as a party to the election petition. The first respondent contended that the election petition should be dismissed having regard to the provisions of Section 82 (*b*). The appellant then filed an application for amendment of the election petition wherein he stated that by 'election agent' he did not mean the candidate who had withdrawn, that there was never an intention to make an allegation against that candidate and that candidate's name should be deleted. The High Court dismissed the election petition. This Court held that Section 86 of the Act was a peremptory provision. It required dismissal of an election petition if there was non-compliance with the requirements of Section 82. Section 82 made it incumbent that a candidate against whom a charge of corrupt practice was made shall be joined as a party. A candidate was defined by Section 79 to mean a person who had been or claimed to have been duly nominated as a candidate at the election, and any such person should be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out to be of prospective candidate. The argument that the person concerned, who was named Periwal, was not a candidate at the election since he had withdrawn and that Section 82 (*b*) should be limited to contesting candidates was rejected and it was held that a candidate who was duly nominated continued to be a candidate for the purposes of Section 82 (*b*) in spite of withdrawal. Judgments of this Court taking the identical view were referred to in support.

Learned counsel for the appellant laid emphasis on the penultimate paragraph of the aforesaid judgment which reads thus :

> "Lastly, it is submitted that Periwal was being charged in his character as an election agent and not as a candidate. This submission runs counter to the amendment petition which says that he was not an election agent and therefore he was really charged in his capacity as an individual and as he was a duly nominated candidate he had to be joined. The argument really contradicts the last amendment petition and cannot be entertained".

He submitted that the allegations of corrupt practice made against a person who, though he had been a candidate, had withdrawn, in his capacity as the election agent of another candidate, did not necessitate his impleadment and this question had been left open in the aforesaid judgment. It is difficult to agree. By reason of the contradiction, the argument was not entertained. But it is clear from what was stated therein-above that a candidate who is duly nominated continues to be a candidate for the purposes of Section 82 (*b*) in spite of his withdrawal and, if allegations of corrupt practice are made against him, he must be impleaded as a party to the election petition or the election petition must fail.

Learned coun el for the first respondent cited the decision in *Udhav Singh* vs. *Madhav Rao Scindia*, 1976 (2) S. C. R. 246. It has been held there that the provisions of Section 82 are based upon a fundamental principle of natural justice that nobody should be condemend unheard. A charge of corrupt practice against a candidate, if established, entails serious penal consequences. It has the effect of debarring his from being a candidate at an election for a considerably long period. That is why Section 82 (*b*) in clear, peremptory terms obligates an election-petitioner to join as a respondent to his petition a candidate against whom allegations of corrupt are made. A respondent cannot by consent waive these provisions or condone them. Even inaction, laches or delay on the part of the respondent in pointing out the defect of non-joinder cannot relieve the Court of its statutory obligation of dismissing such an election petition. In our view, the observations in the case of *Udhav Singh* are wide enough to cover a situation where non-impleadment is shown to be because of an advocate's default.

In the result, we find no merit in the appeal and it is dismissed. No order as to costs.

Sd/-
K. RAMASWAMY (J.)

Sd/-
S. P. BHARUCHA (J.)

Sd/-
K. S. PARIPOORNAN (J.)

New Delhi,
March 26, 1996.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला-5 द्वारा मुद्रित तथा प्रकाशित ।